Supreme Court, U.S.
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No. ~~OFFICE OF THE CLERK~~

In the Supreme Court of the United States

AMP, DDM, JM, DCM, KMR, AND SMK,
Petitioners,

v.

CWM AND ACM, BY PAM, AND DHM,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a state court deprive trust beneficiaries of their property interest and Fourteenth Amendment right to due process by holding that the beneficiaries and the trustee of the trust are precluded by a prior state court paternity adjudication from challenging the beneficiary status of additional claimed biological children of the settlor on the grounds that the purported claimants are not "legitimate" descendants of the settlor, as that term is defined in the trust instrument?

LIST OF PARTIES

Petitioners AMP, DDM, JM, DCM, KMR, and SMK[1] are beneficiaries of the three trusts described in detail in this Petition ("the Trusts").

Respondents CWM and ACM are minors and appear in this litigation through their mother, PAM. Along with Respondent DHM, they claim beneficiary status under the Trusts.

In addition to the parties listed in the caption, William J. Berens and Phillip H. Martin are trustees of the Trusts and are parties to the action below. Trustee William J. Berens is the successor to trustee Robert J. Struyk. The trustees are filing a separate Petition for Writ of Certiorari in this case.

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[1] The original orders of the district court contained the full names of the parties and, because of the sensitive nature of this case, were filed under seal in that court and in the Minnesota appellate courts. In reproducing in the Appendix the district court orders and the order of the Minnesota Supreme Court denying further review, initials have been substituted for the parties' names, in accordance with the practice ordered by the Minnesota Court of Appeals. The substituted initials are indicated by the use of brackets (see, for example, "[AMP]" at App. A-18) and are the same initials used in this Petition and in the decision of the Minnesota Court of Appeals. All other text is reproduced as in the original documents.

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PETITION FOR WRIT OF CERTIORARI

Petitioners AMP, DDM, JM, DCM, KMR, and SMK respectfully petition this Court to issue a writ of certiorari to review the decision of the Minnesota Court of Appeals.

OPINIONS BELOW

The decision of the Minnesota Court of Appeals is reported as *In re Trusteeship of Trust Created under Trust Agreement Dated December 31, 1974*, 674 N.W.2d 222 (Minn. Ct. App. 2004), and is reproduced at App. A-1. The order of the Minnesota Supreme Court denying the Petitioners' Petition for Further Review is unpublished and is reproduced at App. A-18. The underlying orders of the district court for Hennepin County, Minnesota, are unpublished and are reproduced at App. A-20.

JURISDICTION

The decision of the Minnesota Court of Appeals was issued on February 3, 2004. The Minnesota Supreme Court denied the Petitioners' Petition for Further Review on April 20, 2004. Judgment on the decision of the Minnesota Court of Appeals was entered on May 3, 2004. App. A-19. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE[2]

This case concerns the Petitioners' rights, as the proper beneficiaries of three trusts, to due process of law before being deprived of their property interests in those trusts.

AMP, DDM, JM, DCM, KMR, and SMK ("Petitioners") are the legitimate biological children of JHM. JHM, who is now mentally and physically incapacitated, has been married several times, and Petitioners are his children from his earlier marriages.[3] The Petitioners are beneficiaries of the three irrevocable trusts described below ("the Trusts"), and their status as proper beneficiaries of the Trusts is not at issue here.

JHM was married to his third wife, PAM, from 1979 to 1991. DHM, CWM, and ACM were born to PAM during the time she was married to JHM. These three children were born after the Trusts were established and now assert that they, too, should be recognized as beneficiaries of the Trusts.

All three Trusts specifically exclude from beneficiary status persons who are not legitimate descendants of JHM. In 1974, JHM, as settlor, established the JHM 1974 Trust. The beneficiaries of the JHM 1974 Trust are the "issue" of JHM, defined as "persons who are descended from [JHM] *by legitimate birth* to [him]." Appendix to Appellants' Br. to Minn. Ct. App. at 99 (emphasis added). In 1980, JHM, again as settlor, created the 1980 JHM Family Trust, the beneficiaries of which are the "issue of the first generation" of JHM. *Id.* Also in 1980, SMC, KWM, and LMS, as

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[2] The Petitioners adopt and incorporate by reference the statement of the case contained in the Trustees' separately filed Petition for Writ of Certiorari. *See infra* at 11.

[3] The Petitioners are referred to as "the older children" and "the respondent beneficiaries" in the Minnesota Court of Appeals' opinion. App. A-4.

settlors, established the 1980 SMC Trust, which similarly provides that the "issue" of JHM are to be its beneficiaries. Both the 1980 JHM Family Trust and the 1980 SMC Trust define "issue" as JHM's "lineal descendants . . . *except illegitimate descendants*." *Id.* at 117, 141 (emphasis added). All three Trusts are irrevocable and cannot be amended.[4] The combined value of the Trusts is approximately $900 million. William J. Berens, who succeeded Robert J. Struyk, and Phillip H. Martin are the trustees ("Trustees").

In 1986, after DHM and CWM were born, JHM filed a petition for divorce from PAM that alleged that DHM and CWM are not his biological children. JHM later voluntarily dismissed the divorce petition. In 1991, after ACM was born, JHM and PAM were finally divorced in an uncontested proceeding in a Florida court. As part of the divorce, JHM stipulated to his child support obligations to DHM, CWM, and ACM. But the Florida court made no finding of fact or conclusion of law as to the actual biological relationship between JHM and DHM, CWM, and ACM. Neither the Petitioners nor the Trustees were parties to the 1991 Florida divorce proceeding.

In 1997, the Trustees received information that JHM is not the biological father of DHM, CWM, or ACM. Acting pursuant to their fiduciary duty to ascertain the proper beneficiaries of the Trusts, the Trustees commenced an investigation into whether the three children qualify as beneficiaries. Following the investigation, the Trustees determined that there was a reasonable basis to conclude that DHM, CWM, and ACM are not JHM's biological children and therefore not beneficiaries of the Trusts.

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[4] The terms of each of the Trusts provide: "This agreement and the trust created hereunder shall be in all respects irrevocable and neither I . . . nor any other person shall have any power to modify, amend, or revoke the trust hereunder or this agreement in any respect." Appendix to Appellants' Br. to Minn. Ct. App. at 100; *see also id.* at 116, 140.

In 2000, the Trustees filed a petition under Minn. Stat. § 501B.16 in the district court for Hennepin County, Minnesota, for an order "[a]uthorizing and ordering such proceedings as are reasonably necessary to identify the proper beneficiaries" of the Trusts ("the trust proceeding").[5] The Trustees also moved the court for partial summary judgment, seeking a declaration that only biological descendants of JHM are proper beneficiaries of the Trusts and that DHM, CWM, and ACM are not JHM's "issue" and therefore not proper beneficiaries.[6] The Petitioners were parties to the trust proceeding and supported the Trustees' motion. PAM, on behalf of CWM and ACM, and DHM, who had reached the age of majority (collectively "Respondents"),[7] appeared in the trust proceeding and opposed the motion.

In a June 2002 order, the court granted the Trustees partial summary judgment, construed the trust instruments, and concluded that only JHM's biological or legally adopted children are proper beneficiaries of the Trusts. App. A-30. In February 2003, the court ruled that DHM, CWM, and ACM

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[5] Minn. Stat. § 501B.16 authorizes a trustee of an express trust to "petition the district court for an order: . . . (3) to determine the persons having an interest in . . . the trust and the nature and extent of their interests; (4) to construe, interpret, or reform the terms of a trust . . . or (23) to instruct the trustee, beneficiaries, and any other interested parties in any matter relating to the administration of the trust and the discharge of the trustee's duties."

[6] The Respondents contended that the Petitioners and the Trustees were precluded from challenging paternity in the trust proceeding because of the preclusive effect of the Florida divorce decree. In opposition, the Trustees argued that "[f]undamental principles of law and fairness dictate that parties who are strangers to an action can not be barred from litigating the issues determined in that action." Petr's' Supplemental Mem. in Supp. of Pet'rs' Mot. for Partial Summ. J. at A-7.

[7] In this Petition, "the three children" refers to DHM, CWM, and ACM, and "Respondents" refers to the three children and their mother, PAM.

would be denied status as beneficiaries of the Trusts unless they submitted to genetic testing within a specified time. App. A-20. The Respondents appealed.

On appeal, the Respondents claimed that by operation of state parentage acts and because of the Florida divorce decree, the Petitioners and the Trustees were legally precluded from challenging in the trust proceeding the paternity of DHM, CWM, and ACM. The Petitioners argued that denying them an opportunity to protect their interests in the Trusts by asking the district court to determine proper beneficiaries would be a violation of their rights to due process.[8]

The Minnesota Court of Appeals characterized the trust proceeding as a collateral attack on a determination of paternity made by operation of either Florida law, *see, e.g.*, *D.F. v. Dep't of Revenue ex rel. L.F.*, 823 So. 2d 97 (Fla. 2002), or the Minnesota Parentage Act, Minn. Stat. ch. 257.[9] App. A-11, A-13. Accordingly, the court reversed on the ground that the Petitioners were improperly using the trust proceeding to "challenge a previous determination of

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[8] Br. of Beneficiaries to Minn. Ct. App. at 17 ("Due process requires that those whose rights are to be affected be afforded an opportunity to be heard. *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542 (1985); *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). In fact, there is a presumption in the law that a nonparty is not bound by a judgment, which presumption stems from due process concerns with the right to be heard and have one's day in court. *See Tice v. American Airlines, Inc.*, 162 F.3d 966, 972-73 (7th Cir. 1998), *reh'g and suggestion for reh'g en banc denied, cert. denied* 527 U.S. 1036 (1999). Any determination of the trust made in a proceeding in which a trustee has no standing constitutes a fundamental denial of due process.").

[9] The court concluded that the case presented a choice-of-law issue because DHM, CWM, and ACM resided in Florida and Minnesota was the situs of the Trusts. Thus, the court provided an analysis of both Florida and Minnesota law. App. A-9.

paternity made consistent with applicable parentage laws." App. A-2.

The Petitioners and the Trustees petitioned for further review in the Minnesota Supreme Court, arguing that the court of appeals' decision deprived them of property without due process.[10] The Respondents cited this Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), for the proposition that the court of appeals' decision did not constitute a due process violation. The Minnesota Supreme Court denied Petitioners' Petition for Further Review on April 20, 2004, App. A-18, and that of the Trustees on April 22, 2004. This Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

I. The Minnesota Court of Appeals violated Petitioners' Fourteenth Amendment rights to due process by holding that the action to determine proper trust beneficiaries was precluded by adjudications of paternity in proceedings in which Petitioners had no opportunity to participate.

The Petitioners and the Trustees, acting on credible evidence that DHM, CWM, and ACM were not the biological children of JHM, exercised their statutory right to seek a determination by the district court of the proper beneficiaries of the Trusts. The Petitioners and the Trustees did not attack any adjudication of paternity under Florida or Minnesota law. The Minnesota Court of Appeals' decision that the Petitioners' rights with respect to the Trusts are cut off by adjudications of paternity, in proceedings in which the

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[10] *E.g.*, Beneficiaries' Pet. for Further Review at 5 ("Due process requires that those whose rights are to be affected be afforded an opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). The Court of Appeals, however, declines to afford such right to the Trustees and to these petitioning beneficiaries.")

Petitioners had no opportunity to participate, deprives the Petitioners of their recognized property interest in the Trusts without due process of law.

The Fourteenth Amendment guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Petitioners have a recognized, federally protected property interest in the Trusts. *See Bd. of Regents v. Roth*, 408 U.S. 564, 571-72 (1972); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). Paying distributions to people who are not properly beneficiaries improperly depletes the Trusts' assets and therefore deprives not only the Petitioners but also all proper beneficiaries of their property without due process.

The Minnesota Court of Appeals held that the district court erred by declaring that DHM, CWM, and ACM are not biological children of JHM, for purposes of the Trusts, subject to their submitting to genetic testing to establish the contrary. The court offered two grounds for its holding. First, the court stated that the Respondents' paternity had been established by operation of law in the 1991 uncontested Florida divorce proceeding and that the resulting decree was entitled to full faith and credit from Minnesota courts. App. A-13. Second, the court stated that by operation of the Minnesota Parentage Act, Minn. Stat. ch. 257, the three children are deemed to be the biological children of JHM and therefore the Trustees' "challenge" to the children's paternity in the trust proceeding was not authorized by Minnesota law. App. A-15. The Minnesota Court of Appeals' confusion of two distinct inquiries under the law—paternity and trust-beneficiary status—is an error of constitutional dimension.

The Petitioners do not dispute that a divorce decree or paternity adjudication from a foreign state is entitled to full faith and credit in a Minnesota court. U.S. Const. art. IV, § 1. However, the full faith and credit clause does not mandate that a decision as to "paternity," made in a different

proceeding with different parties and different rights at stake, shall bind a third party with respect to the third party's own property rights based on "legitimacy," as that term is defined by the Trusts. The "'full faith and credit' clause and the act of Congress passed pursuant to it do not entitle a judgment in personam to extraterritorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound." *Baker v. Baker, Eccles, & Co.*, 242 U.S. 394, 401 (1917). "The fundamental requisite of due process of law in judicial proceedings is the opportunity to be heard." *Id.* at 403. "To hold one bound by the judgment who has not had such opportunity is contrary to the first principles of justice." *Id.*

Because the Petitioners had no opportunity to be heard in the divorce or any other Florida "paternity" proceeding concerning the three children, the Minnesota Court of Appeals' decision that the Trustees and Petitioners are bound with respect to the Trusts by the Florida adjudication of paternity violates the Petitioners' Fourteenth Amendment rights to due process.

The same principle is implicated in the court's holding that by operation of the Minnesota Parentage Act, the Petitioners are barred from seeking a judicial determination of the Respondents' beneficiary status in the trust proceeding. The Petitioners had no right or standing to participate in any adjudication of paternity under the Minnesota Parentage Act. Minn. Stat. § 257.57, subd. 1 (stating that only child, mother, or father have standing under Act). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation omitted). The "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane*, 339 U.S. at 314. Because the Petitioners had no standing to contest paternity under the Minnesota Parentage

Act (or, for that matter, under the Florida Determination of Parentage Act, Fla. Stat. Ann. § 742.011), the holding that the Petitioners cannot seek a determination of beneficiary status under the Trusts deprives the Petitioners of an opportunity to be heard at a meaningful time and in a meaningful manner. Thus, the decision of the Minnesota Court of Appeals violates the Petitioners' Fourteenth Amendment rights to due process.

Moreover, the court of appeals' and Respondents' reliance on *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), is erroneous. The plurality in *Michael H.* rejected the petitioner's claim that he had a constitutionally protected liberty interest in his relationship with his biological daughter. *Michael H.*, 491 U.S. at 127; *but see id.* at 136 (Brennan, J., dissenting) (stating that five members of the Court refuse to foreclose possibility that father may have such a liberty interest). Here, the Petitioners have a constitutionally protected property interest in their distributions under the Trusts, and the court of appeals' misplaced reliance on state parentage acts and *Michael H.* deprives them of that. Moreover, the plurality opinion in *Michael H.* stands for the proposition that the law has traditionally protected the marital family, meaning married individuals who hold a child out as their own, from a claim that the child's biological father has a due process right to visitation and other parental rights. *See id.* at 124. But here, the Petitioners do not challenge the parent-child relationship between JHM and DHM, CWM, and ACM. All the Petitioners asked the court to do was to determine who is a proper beneficiary under the terms of the trust instruments. *Michael H.*, therefore, does not apply to this case.

This case does not concern paternity, the relationship of rights and obligations between a father and child. The validity of any legal determination that may have been made with respect to DHM, CWM, and ACM is not at issue here. However, a beneficiary cannot be denied his or her property interest in a trust, which defines a beneficiary as a

"legitimate" descendant, because of an adjudication of "paternity" in a proceeding in which the beneficiary had no opportunity to participate. Because the Minnesota Court of Appeals has deprived the Petitioners of their property by holding that they are bound by the result of a proceeding in which they had no opportunity to participate, the court's decision violates the Petitioners' Fourteenth Amendment rights to due process.

II. Because courts in different states are relying on *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), to cut off the property rights of trust beneficiaries without due process, the Minnesota Court of Appeals' decision raises an important question of constitutional law that has not been, but should be, settled by this Court.

In holding that the Petitioners could not ask the district court to determine the proper beneficiaries of the Trusts because of the earlier adjudications of paternity under state law, the Minnesota Court of Appeals noted that "[o]ther courts have reached the same conclusion after applying state parentage acts to facts similar to those before us." App. A-16. Specifically, the court relied on *In re Trust Created by Agreement Dated December 20, 1961*, 765 A.2d 746 (N.J. 2001). *Id.* There, the New Jersey Supreme Court, relying exclusively on *Michael H.*, rejected a due process claim made by a trust beneficiary. 765 A.2d at 362-63. The New Jersey Supreme Court and Minnesota Court of Appeals' decisions demonstrate that courts need guidance from this Court as to the due process rights of trust beneficiaries who seek not to attack paternity but to establish genetic fact for purposes of trust administration. If this Court does not intervene, the property rights of beneficiaries of trusts throughout the United States may be cut off without due process. What is more, these cases show that this Court's decision in *Michael H.* has been misunderstood and misapplied. Because of these

developments in the courts of different states, this Court should grant this petition to consider an important constitutional question that has not been, but should be, settled by the Court.

III. Petitioners support and adopt the arguments set forth in Trustees' separate Petition for Writ of Certiorari filed in this case.

The Petitioners agree with, adopt, and incorporate by reference the statement of the case and reasons for granting a writ of certiorari to the Minnesota Court of Appeals contained in the Trustees' independent Petition for Writ of Certiorari in this case, which will be filed separately. *See In re Trusteeship of Trust Created under Trust Agreement Dated Dec. 31, 1974*, 674 N.W.2d 222 (Minn. Ct. App. 2004), *petition for cert. filed sub nom. William J. Berens and Phillip H. Martin, Trustees v. CWM and ACM, by PAM, and DHM* (U.S. July 16, 2004).

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that this Court grant their Petition for Writ of Certiorari to the Minnesota Court of Appeals.

Respectfully submitted,

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STATE OF MINNESOTA
IN COURT OF APPEALS
A03-454

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980; and

In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980.

Filed February 3, 2004
Reversed
Halbrooks, Judge

Hennepin County District Court
File Nos. C6-91-166, C9-91-159, C5-91-160

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Considered and decided by Halbrooks, Presiding Judge, Kalitowski, Judge, and Stoneburner, Judge.

SYLLABUS

Minn. Stat. § 501B.16(3), (4) (2002), which authorizes trustees to petition the district court for an order determining trust beneficiaries and interpret trust terms, does not authorize trustees to mount a collateral attack on a beneficiary's previously determined paternity without regard for the standing and timeliness requirements of applicable parentage laws.

OPINION

HALBROOKS, Judge

Respondent trustees brought a petition pursuant to Minn. Stat. § 501B.16 (2002), requesting the district court to determine beneficiaries and interpret terms of three trusts created by settlor JHM. Appellants, JHM's ex-wife PAM and the children born to her during her marriage to JHM (the younger children), challenge the district court's interpretation of trust language determining the beneficiaries of the trusts. Appellants argue that the district court erred by (1) interpreting the subject trusts as limiting beneficiaries to JHM's biological children and (2) concluding that relevant portions of the applicable parentage act did not conclusively establish the biological paternity of the younger children, thereby precluding any subsequent paternity challenge brought by respondent trustees. By notice of review, respondent beneficiaries challenge the district court's conclusion that it lacked personal jurisdiction over the younger children and could not therefore compel them to undergo genetic testing.

We conclude that Minn. Stat. § 501B.16 does not authorize trustees to challenge a previous determination of paternity made consistent with applicable parentage laws, and that the trustees here may not challenge the younger children's paternity in the context of their trust-clarification action. We further conclude that were such a challenge authorized by section 510B.16, it would nonetheless be unavailable to

respondent trustees here because of their failure to comply with the standing and timeliness requirements of applicable parentage laws.

FACTS

In 1974, JHM created an irrevocable trust (the 1974 Trust), the primary beneficiaries of which were his "issue," defined in the trust as "all persons who are descended from [JHM], either by legitimate birth to or legal adoption by him or any of his legitimately born or legally adopted descendants." The 1974 trust authorizes the trustees to make discretionary distributions of trust income and principal to named beneficiaries.

In 1980, JHM created two more irrevocable trusts (the 1980 Trusts), both of which designated JHM's children as beneficiaries, defined "child" as "issue of the first generation," and defined "issue" as

> all persons who are lineal descendants of [JHM] (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants.

Each trust provided that neither JHM nor any other person could modify, amend, or revoke the trust in any respect. Each trust is to be interpreted according to law of its situs, which for all three trusts has always been Minnesota. The combined value of the trusts is approximately $900,000,000.

JHM has been married three times. The six children born during his first two marriages are referred to in this matter as

"the older children." JHM married PAM, his third wife, in 1979; they were divorced in 1991. During the marriage, PAM gave birth to DHM (in 1983), CWM (in 1985), and ACM (in 1987), referred to in this matter as "the younger children." On each child's birth certificate, JHM is listed as the father. PAM and DHM, who has since reached majority, are represented in this matter; the district court is representing CWM and ACM pursuant to Minn. Stat. § 501B.19 (2002), which authorizes a court to represent interested minors in trust proceedings.

In 1986, JHM filed a petition to dissolve his marriage to PAM that challenged the paternity of DHM and CWM. ACM was not yet born. JHM subsequently filed a notice of voluntary dismissal of the action, stating that "with respect to the issues raised by him relative to the paternity of [DHM and CWM] ... [he] voluntarily dismisse[d the] petition *with prejudice*."

In 1989, the trustees of a fourth trust, created for the benefit of JHM and not at issue here, filed a petition in Minnesota district court seeking authorization to distribute trust assets to JHM's "children," a beneficiary class defined in the trust instrument as "all [of JHM's] legal issue and all adopted children." The petition, which was considered without objection from the older children, identified the younger children as JHM's and therefore eligible to receive trust distributions. In granting the petition, the district court specifically found that DHM, CWM, and ACM were JHM's children.

In 1991, JHM and PAM dissolved their marriage pursuant to a settlement agreement that specifically provided that the younger children are "children of the marriage" and stated that "no additional issue is contemplated." The agreement also provided:

> Husband further agrees that in the event of his death, with respect to any testamentary disposition of his assets held by him or in trust for his benefit, the [younger children] shall share equally and no differently than Husband's children from prior or future marriages. The Husband shall insure and require that in the event any new or future trusts are established by him, that the instruments will reflect the above agreement and that this obligation is specifically enforceable by a court of competent jurisdiction.

The agreement's article governing law and venue provides: "The parties agree that if any action or proceeding by either party dealing with the provisions of this Settlement Agreement and/or the [younger children] is commenced, Florida law will govern." The agreement was incorporated into the final judgment of dissolution of marriage entered in Florida in February 1991.

In 1997, respondent trustees, who are neither beneficiaries of the subject trusts nor members of JHM's family, received information that JHM is not the father of PAM's children. Reasoning that they had a duty to ascertain the proper trust beneficiaries, the trustees conducted an investigation and determined that there is a basis to reasonably conclude that PAM's children are not JHM's children.

In April 2000, two of the older children filed, and were granted, a petition in district court to determine JHM's capacity and to appoint them as plenary guardians over his person and property. The petition stated that the younger children are JHM's minor children.

In July 2000, respondent trustees brought a "Petition for Order to Determine Beneficiaries and for Other Relief" pursuant to Minn. Stat. § 501B.16(3), (4) (2002), which

authorizes trustees to request that the district court interpret the terms of a trust in order to identify beneficiaries and determine the nature and extent of their interests. The petition requested an order "[a]uthorizing and ordering such proceedings as are reasonably necessary to identify the proper beneficiaries of the Subject Trusts." In an affidavit accompanying the petition, the trustees asserted that "blood or saliva testing could be used to resolve conclusively the question of the parentage of [the younger children] for the purpose of this proceeding."

The trustees then filed a motion for partial summary judgment, requesting a declaration that any beneficiary of the subject trusts must be a biological descendent of JHM and that the younger children are not JHM's "issue" as the term is defined in the subject trusts. Respondents, the older children, filed a memorandum in support of the trustees' motion. Appellants brought a cross-motion to dismiss the trustees' petition, arguing that the trustees are precluded under the Florida Parentage Act and the Minnesota Parentage Act from challenging the younger children's paternity by (1) the 1991 judgment and decree of dissolution; (2) JHM's voluntary dismissal with prejudice of the 1986 paternity challenge; and (3) the 1989 Minnesota district court order finding the younger children to be JHM's for the purposes of a trust distribution. Appellants also moved for summary judgment on the grounds that the younger children are proper beneficiaries under the terms of the trusts, arguing that the term "issue" in the trusts does not require biological parentage. For the purposes of the cross-motions, the parties stipulated that the younger children "are not the biological children of [JHM]."

By an order issued in June 2002, the district court granted respondent trustees' motion, concluding that, under the terms of the trusts, beneficiaries must be JHM's biological or adopted children. The court authorized the respondent trustees "to conduct such proceedings and/or investigation as

reasonably necessary to determine if the [younger children] are the biological children of [JHM]." The court denied all of appellants' motions, reasoning that (1) as to standing, the respondent trustees were specifically authorized by Minn. Stat. § 501B.16 to ascertain beneficiaries; (2) the 1991 dissolution judgment was conclusive as to the younger children's legitimacy and JHM's paternity for the purposes of child support, but had no preclusive effect on respondent trustees' challenge to the younger children's paternity for the purposes of determining the trust beneficiaries.

In July 2002, respondent trustees filed a Motion for Order Approving Process for Determination of Beneficiary Status in which they requested the district court to declare that the younger children are not the biological children of JHM unless they submit to genetic testing under agreed-upon, court-directed circumstances. Appellants filed motions (1) opposing the genetic-testing proposal; (2) requesting reconsideration of the June 2002 order; and (3) to compel discovery related to respondent trustees' factual inquiry into the younger children's paternity. Appellants' request for discovery was premised on the argument that the younger children's parentage should be determined by "traditional means before any genetic testing." Appellants also argued that respondent trustees' July 2000 petition to determine beneficiaries was barred by the doctrine of laches because the trustees knew as early as December 1997 of allegations questioning the younger children's paternity.

In February 2003, the district court issued an order granting respondent trustees' motion and denying all of appellants' motions. The court subsequently issued a judgment declaring that the younger children are not the biological children of JHM for the purposes of the subject trusts unless they submit to genetic testing within either one year of the order or within one year of attaining majority, whichever is later. The court reasoned that because this is an

in rem proceeding, it lacks personal jurisdiction over the younger children and cannot order them to undergo genetic testing. This appeal follows.

ISSUE

Did Minn. Stat. § 501B.16 (2002) authorize the trustees to seek a determination that JHM is not the younger children's biological father?

ANALYSIS

Appellants argue that the trustees and respondent beneficiaries are precluded from requesting a declaration that the younger children are not JHM's biological issue because such an authorization is not authorized by Minn. Stat. § 501B.16 (2002) where the children's paternity has been previously established pursuant to both Florida and Minnesota parentage laws. Appellants contend that the trustees' challenge to the younger children's parentage action fails to meet those acts' standing and timeliness requirements and is barred by res judicata as an attempt to relitigate a previously adjudicated issue. Statutory construction is a question of law, which we review de novo. *In re Estate of Zeno*, 672 N.W.2d 574, 576 (Minn. App. 2003).

Whether Minn. Stat. § 501B.16 authorizes trustees to challenge a beneficiary's parentage, as previously determined by applicable parentage laws, is an issue of first impression in Minnesota. Respondent trustees and respondent beneficiaries first argue that the trustees' action is not governed by either the Florida or the Minnesota Parentage Act because it does not seek to challenge the younger children's paternity as established by those statutes, but is merely seeking to clarify and enforce the terms of the subject trusts pursuant Minn. Stat. § 501B.16. We disagree with respondents' characterization of the trustees' action.

As the filings in this matter make clear, the challenge to the younger children's paternity is the kernel of the trustees' petition. Both respondents requested - and obtained - a declaration from the district court that the younger children are not JHM's biological issue and cannot therefore be trust beneficiaries; without such a declaration, the trustees' petition for clarification would contain no practical request for relief *Cf. In re Estate of Lamey v. Lamey*, 689 N.E.2d 1265, 1269 (Ind. Ct. App. 1997) (holding that where an action to identify heirs will necessarily require an action to determine paternity, "there is no practical difference between these two types of actions"). We further observe that the district court's June 2002 order specifically describes the trustees' action, and allows it to go forward, as "a challenge by the trustees of [JHM's] paternity of the younger children."

We agree with respondents' contention that the trustees have standing to request trust clarification pursuant to Minn. Stat. § 501B.16. But section 501B.16 does not thereby confer standing upon the trustees to challenge the younger childrens' paternity by bringing a collateral attack of a preexisting adjudication of parentage made consistent with applicable parentage laws.

We next address whether the applicable parentage law is that of Florida, where the younger children were born and reside, or of Minnesota, the situs of the subject trusts. Although the trusts are clear that Minnesota law must control their interpretation, the status of a person who may be a beneficiary of an instrument created under Minnesota law is determined by the laws of that person's domicile. *See In re Patrick's Will*, 259 Minn. 193, 196, 106 N.W.2d 888, 890 (1960) (stating that "[w]ith respect to a claimant's right to take from an estate being probated in this state, the status of the claimant is determined by the laws of his domicile, but his rights in the estate are determined by the laws of this state"); Restatement (Second) of Conflicts of Laws § 287 (1971)

(stating that generally, the traditional rule is that determinations of paternity status are governed by the local law under which the status was created).

"Before applying the choice-of-law analysis, this court must first determine whether the choice of one law will be outcome determinative, i.e., whether there is an actual conflict." *Kearns v. Am. Family Ins. Group*, 486 N.W.2d 796, 798 (Minn. App. 1992) (quotation omitted), *review denied* (Minn. Aug. 4, 1992). We therefore consider whether the application of Florida or Minnesota law will lead to different results in this case.

In Florida, courts maintain "the presumption that a child born in wedlock is the blood issue of the partners of such marriage." *Knauer v. Barnett*, 360 So. 2d 399, 403 (Fla. 1978). Parentage proceedings in Florida are governed by the Determination of Parentage Act, Fla. Stat. ch. 742 (2002). That act provides:

> Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the child when paternity has not been established by law or otherwise.

Fla. Stat. § 742.011. Chapter 742 "is the exclusive remedy for establishing paternity in Florida." *Achumba v. Neustein*, 793 So. 2d 1013, 1016 (Fla. Dist. Ct. App. 2001).

Paternity is established by law "when there has been an adjudication of paternity or by the filing of affidavits or stipulation acknowledging paternity." *G.F.C. v. S. G.*, 686 So. 2d 1382, 1385 (Fla. Dist. Ct. App. 1997). The Florida Supreme Court has held that "a final judgment of dissolution of marriage which establishes a child support obligation for a

former husband is a final determination of paternity." *D.F. v. Dep 't of Revenue ex rel. L.F.*, 823 So. 2d 97, 100 (Fla. 2002). Although subsequent challenges to legally established paternity may be brought pursuant to Fl. R. Civ. P. 1.540 for mistake, newly discovered evidence, or fraud, a motion for relief from a final judgment on any of those grounds must be brought "not more than 1 year after the judgment, decree, order, or proceeding was entered or taken." *Id.* (quoting Fl. R. Civ. P. 1.540(b)(5)); *Florida Dep 't of Revenue ex rel. Sparks v. Edden*, 761 So. 2d 436, 437 n.2 (Fla. Dist. Ct. App. 2000) (stating that "[a]bsent a showing of fraud upon the court a trial court is without jurisdiction to permit a challenge to a judgment of paternity more than one year after its rendition").

Here, the 1991 dissolution decree, as entered into judgment in Florida, stated that JHM was the younger children's father and established JHM's child-support obligations. We observe that JHM had previously stipulated to paternity of the two elder younger children when he voluntarily dismissed, with prejudice, his 1986 paternity challenge. We conclude that these acts established JHM's paternity of the younger children in Florida as a matter of law. We further observe that even had the younger children's paternity not been established under Florida law, only "[a] woman who is pregnant or has a child, [a] man who has reason to believe that he is the father of a child, or [a] child" has standing to challenge paternity. Fla. Stat. § 742.011. The trustees therefore lack standing to challenge the younger children's paternity under Florida law. Further, even if they had standing, the trustees' challenge is barred as untimely under Florida law.

In its order permitting the trustees to challenge JHM's paternity of the younger children, the district court correctly cited *Daniel v. Daniel*, 695 So. 2d 1253, 1254 (Fla. 1997), for the proposition that in Florida, "paternity and legitimacy are related, but nevertheless separate and distinct concepts." In

Daniel, the court held that "legitimacy" refers to the status of a child born during a valid marriage, while "paternity" refers to the status of being the natural, or biological, father of a child. *Id.* at 1254-55. Citing *Daniel*, the district court concluded that Florida law preserves the presumption of legitimacy for children born during a marriage but "clearly permits a challenge to a determination of paternity, subject to various limitations." We find the court's reliance on *Daniel* misplaced in that the parties in *Daniel* stipulated in the marriage dissolution proceeding that the husband was not the biological father of the child born to his wife during the marriage. *See id.* at 1254. In the case before us, paternity was stipulated in an adjudicated dissolution decree. *Daniel* held that a child's legitimacy is unaffected where a former husband raises the issue of paternity during a dissolution proceeding. *Id.* at 1255. The Florida Supreme Court has since held that *Daniel* does not affect the principles that "a final judgment of dissolution of marriage which establishes a child support obligation for a former husband is a final determination of paternity" and that any subsequent challenge to paternity must be brought under the provisions of the rules of civil procedure governing relief from judgment, decrees, or orders. *D.F.*, 823 So. 2d at 100.

Florida courts have consistently "applied the principle that a divorce decree which establishes the paternity of a child is a final determination of paternity." *Anderson v. Anderson*, 746 So. 2d 525, 526 (Fla. Dist. Ct. App. 1999) (quotation omitted). The trustees cite no authority permitting them to use the trust-clarification petition to circumvent the standing and timeliness requirements of the Florida Parentage Act or otherwise reopen the dissolution judgment establishing JHM's paternity of the younger children. *See Knauer*, 360 So. 2d at 403 (holding that where father's acknowledgement of paternity rendered child legitimate for all purposes, factual proof of paternity by father was unnecessary and irrelevant in declaratory judgment proceeding to determine whether son

was "blood issue" of father within meaning of trust instrument). We conclude that under the Florida Parentage Act, when a child is born into a marriage, the law does not expressly authorize a third party, who is not asserting paternity in the child, to petition the court for a mandatory determination of a child's paternity under the guise of a petition to clarify a trust instrument.

"[A]s a general matter, foreign dissolution decrees are entitled to full faith and credit from the Minnesota courts." *Mahoney v. Mahoney*, 433 N.W.2d 115, 119 (Minn. App. 1988), *review denied* (Minn. Feb. 10, 1989). We therefore conclude that the 1991 Florida dissolution decree and JHM's 1986 voluntary dismissal with prejudice of the 1986 paternity action conclusively established the younger children's status as his biological issue under Florida law. That status is entitled to full faith and credit in Minnesota courts, and the trustees are therefore barred by the Florida Parentage Act's standing and timeliness requirements from challenging the younger children's paternity.

We next address the younger children's parentage status under Minnesota law. The Minnesota Parentage Act "provides the exclusive bases for standing to bring an action to determine paternity." *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn. 2001). "Whether the trial court properly interpreted the parentage act is a question of law, which we review without deference to the trial court's conclusions." *In re Welfare of C.M.G.*, 516 N.W.2d 555, 558 (Minn. App. 1994). "Whether and when a person may bring a paternity action depends on which presumptions of paternity, if any, apply." *Witso*, 627 N.W.2d at 66 (citing Minn. Stat. § 257.57 (2000)). Under the Minnesota Parentage Act, a man is presumed to be the biological father of a child born to his wife. Minn. Stat. § 257.55, subd. 1(a) (2002). That presumption may be rebutted by clear and convincing evidence, *id.*, subd. 2 (2002), but only by the child, the mother, or the presumptive father,

Minn. Stat. § 257.57, subd. 1 (2002), and "in no event later than three years after the child's birth," at which point the presumption becomes irrebuttable. Id., subd. 1(b). Adjudications of parentage under the parentage act are "determinative for all purposes." Minn. Stat. § 257.66, subd. 1 (2002).

The parentage act's standing requirements contain no exceptions. *See Markert v. Behm*, 394 N.W.2d 239, 242 (Minn. App. 1986) (observing that the act confers standing "only upon" those persons named). The act's timeliness requirements are similarly inflexible: "The obvious intent of the three-year statute of limitations is to make the presumption of legitimacy conclusive once a child reaches three years of age." *Pierce v. Pierce*, 374 N.W.2d 450, 452 (Minn. App. 1985), *review denied* (Minn. Nov. 4, 1985); *see also DeGrande v. Demby*, 529 N.W.2d 340, 343-44 (Minn. App. 1995) (holding that "[e]ven in the face of scientific evidence excluding [a party's] biological paternity, the three-year statute of limitations contained in the Minnesota Parentage Act is an absolute bar to an action to declare the father-child relationship nonexistent"), *review granted* (Minn. May 16, 1995), *appeal dismissed* (Minn. July 27, 1995); *Clay v. Clay*, 397 N.W.2d 571, 575 (Minn. App. 1986) (holding that even where the former husband "knew or should have known at the time of the dissolution" that the child born of the marriage was not his biological issue, the district court properly refused to vacate the portion of the marriage dissolution decree naming appellant father of the child in question, despite blood tests indicating he could not be the child's father), *review denied* (Minn. Feb. 17, 1987).

In support of its conclusion that "[t]he presumption of legitimacy is not a per se bar to a challenge by the trustees of [JHM's] paternity of the younger children," the district court relied on our decision in *In re Estate of Palmer*, 647 N.W.2d 13 (Minn. App. 2002), *aff'd*, 658 N.W.2d 197 (Minn. 2003),

for the proposition that "[c]lear and convincing evidence of the parentage may be used [to challenge paternity] regardless of the limitations of the parentage act." We find the district court's reliance upon *Palmer* misplaced in that *Palmer* concerned the interpretation of a provision of the Minnesota Probate Code stating that "the parent and child relationship *may* be established under the Parentage Act." *Id.* at 15 (quoting Minn. Stat. § 524.2-114(2) (2000)). We concluded that because "may is permissive . . . [t]he probate court's jurisdiction over the determination of heirs and successors is not limited by the Parentage Act." *Id.* Minn. Stat. § 501B.16, under which the trustees brought their petition for trust clarification, contains no analogous permissive language authorizing the district court to look beyond the parentage act's justiciability requirements to entertain a paternity challenge.

We conclude that because JHM's biological paternity of the younger children was previously adjudicated under Minnesota law and because the trustees did not meet the standing and timeliness requirements of the Minnesota Parentage Act, their attempt to challenge the younger children's established paternity was not authorized by either Minnesota or Florida law. Because we conclude that no actual conflict is created by the choice of whether Florida or Minnesota law applies to the trustees' challenge to the younger children's paternity, no choice-of-law analysis is necessary.

In Minnesota, the "parent and child relationship" is "the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations." Minn. Stat. § 257.52 (2002). "The guiding principle [of the parentage act] is that the best interests of the child are paramount." *Wilson v. Speer*, 499 N.W.2d 850, 852 (Minn. App. 1993), *review granted* (Minn. July 19, 1993), *appeal*

dismissed (Minn. Aug. 16, 1993). In *Michael H. v. Gerald D.*, 491 U.S. 110, 119-120, 109 S. Ct. 2333, 2340 (1989), the court stated that a determination of parentage made pursuant to a state parentage act reflects

> a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, that given a certain relationship between the husband and wife, the husband is to be held responsible for the child, and that the integrity of the family unit should not be impugned.

(Quotation omitted.) Given the clear statements of policy expressed by the parentage act, we cannot conclude that the legislative intent embodied in that act would be furthered were we to permit third-party challenges to prior adjudications of paternity.

Other courts have reached the same conclusion after applying state parentage acts to facts similar to those before us. In *In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746 (N.J. 2001), certain trust beneficiaries filed a challenge to a beneficiary's parentage and thus her status as a beneficiary of the trust. *Id.* at 751. The court held that the New Jersey Parentage Act, the applicable terms of which are substantively similar to those before us, foreclosed the beneficiaries' third-party attack on a beneficiary's parentage adjudicated on the basis of an acknowledgement of paternity in a divorce action; the beneficiaries thus could not collaterally attack the parentage in an attempt to exclude the beneficiary. *Id.* at 755. The court specifically found that the term "issue," the same term used in the subject trusts before us, includes children whose paternity has been established under the state parentage act. *Id.* at 757.

Both the Minnesota and Florida parentage acts provide limited opportunity for certain specified individuals to

challenge a determination of paternity previously adjudicated in a divorce proceeding. Although Minn. Stat. § 501B.16 authorizes respondent trustees to request a clarification of the trust language, that law does not authorize respondents to circumvent the standing and timeliness requirements of the applicable parentage acts in order to mount a collateral attack on the younger children's paternity. Because we conclude that Minn. Stat. § 501B.16 does not authorize the trustees' action, we do not address the alternative grounds for dismissal or the other issues raised by the parties.

DECISION

Minn. Stat. § 501B.16 (2002) does not authorize trustees to collaterally attack a beneficiary's previously adjudicated parentage where no applicable parentage law authorizes third parties to seek a declaration disestablishing parentage under the guise of a trust-clarification action. The district court therefore erred in permitting respondent trustees to challenge the younger children's paternity and in declaring that the younger children are not the biological issue of JHM. We therefore reverse the district court's decision and order that summary judgment be entered in favor of appellants.

Reversed.

STATE OF MINNESOTA
IN SUPREME COURT
A03-454

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980; and In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petitions of [AMP], [DM], [JM], [DM], [KMR] and [SMK] for further review be, and the same are, denied.

Dated: April 20, 2004

BY THE COURT:

s/
Alan C. Page
Associate Justice

BLATZ, C.J., took no part in the consideration or decision of this case.

STATE OF MINNESOTA
In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980; and In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980

JUDGMENT
Court of Appeals

Appellate Court # A03-454

Trial Court # C6-91-166/ C9-91-159 / C5-91-160

Pursuant to a decision of Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Hennepin County District Court, Probate/Mental Health Division herein appealed from be and the same hereby is reversed and judgment is entered accordingly. A certified copy of the entry of judgment and the court's decision is herewith transmitted and made part of the remittitur.

Dated and signed:
May 3, 2004

FOR THE COURT

Attest: Frederick K. Grittner
Clerk of the Appellate Courts

By: s/_____
Assistant Clerk

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE-MENTAL HEALTH DIVISION

In the Matter of the Trusteeship of
the Trust known as the "[JHM 1974 Trust]"
Created Under Trust Agreement dated
December 31, 1974

In the Matter of the Trusteeship of
the Trust known as the "[1980 JHM Family
Trust]" Created Under Trust Agreement
Dated December 30, 1980

In the Matter of the Trust known as the
"[1980 SMC Trust]" Created Under Trust
Agreement Dated December 30, 1980

ORDER DETERMING TRUST BENEFICIARIES AND DENYING OTHER RELIEF

File No. C6-91-166
C9-91-159
C9-91-160

This matter came before the court on October 17, 2002, on: (a) the Motion filed July 3, 2002 of Robert J. Struyk and Phillip H. Martin, co-trustees of all three trusts (hereinafter "trustees"), for an Order regarding the process to determine the biological descent of [DHM], [CWM] and [ACM] (hereinafter collectively referred to as "the younger children"); (b) the Motion filed July 31, 2002 of [PAM] and [DHM] to Compel Discovery; (c) the Request filed August 8,

2002 of [PAM] and [DHM] for a reconsideration of the court's order of June 21, 2002; and (d) the Motion filed October 16, 2002 of [PAM] and [DHM] to Strike Memorandum of Trustees responding to request for re-consideration and to the opposition to the process to determine the biological descent.

Following the hearing, counsel for the parties agreed to submit written memoranda, which were timely submitted on November 18, 2002.

Trustees appeared by their attorneys, Richard B. Solum and Joseph K. Thiegs.

[PAM] and [DHM] appeared by their attorneys, Frederick W. Morris and David R. Crosby.

[JM], [DDM], [KMR], [AMP], [DCM], and [SMK] (hereinafter collectively, "the older children") appeared by their attorney, Phillip A. Cole.

The matter was referred for hearing to Bruce Kruger, District Court Referee, who now reports to the Court making the following:

FINDINGS OF FACT

1. The background of the establishment of the instant trusts and a summary of their pertinent provisions and the family history of [JHM] ([JHM]) are set forth in this court's order of June 21, 2002, and that information is herein incorporated by reference. That order determined that the beneficiaries of the three trusts are the biological descendants of [JHM] or persons descended from [JHM] through legal adoption, subject to some restrictions concerning the adoptions. Adoption is not involved in these proceedings. The instant hearing is a continuation of the earlier proceedings, and the court retains its jurisdiction as a

proceeding *in rem*. Likewise, the court continues to represent [CWM] and [ACM], the two "younger children" who have not attained majority. Minn. Stat. § 501B.19 (2000).

2. [PAM] and [DHM] appealed this court's Order of June 21, 2002 to the Minnesota Court of Appeals, but they also moved the Court of Appeals for a determination that the June 21, 2002 order was not final and appealable. At the time of the instant hearing, the appeal was pending, and the Court of Appeals had not ruled on the motion concerning appealability. This court expressed doubt that it had jurisdiction to hear the matters raised in the four matters described above. Counsel and the court agreed to proceed with the hearing, and agreed the court would withhold any ruling until the Court of Appeals determined the appeal. On October 22, 2002, the Court of Appeals ruled that the June 21, 2002 Order was not final, and dismissed the appeal. No. C2-02-1725 (Minn. Ct. App., October 22, 2002). Counsel for the parties subsequently agreed to submit additional written submissions on the four matters pending before this court by Friday, November 15, 2002, and the court actually received the last of these on Monday, November 18, 2002. The submissions were considered timely.

3. The request for reconsideration is based largely upon this court's citation of Est. of Palmer v. Palmer, No C7-02-182 (Minn. Ct. App., June 18, 2002). Initially, there is a suggestion that counsel for the trustees had made this court aware of that decision. It is correct that a copy of the decision was mailed to the court by counsel for the trustees, but this court became aware of the decision when it was announced and prior to receipt of the mailing. This court had, for practical purposes, written the June 21, 2002 order before it received the mailing from trustees' counsel. Secondly, and contrary to the assertion in the request, this court did not rely entirely or largely upon *Palmer*. In fact, this court did not determine whether Florida or Minnesota law would govern.

It concluded that inquiry into parentage in the instant facts was not barred by either Florida or Minnesota law (citing *Palmer* for the latter). Given the residency of "the younger children," it is likely that Florida law would control, although that determination has not been made. Thirdly, this court is now aware that the Minnesota Supreme Court has accepted review of *Palmer*, and that oral arguments have already occurred.

4. The Motion to Strike is now moot. This court will not be re-considering its June 21, 2002 order. In addition, pursuant to the agreement of counsel and this court, all parties were given additional time to submit post hearing written memoranda, and did so. The court will consider these memoranda, in addition to those submitted prior to the instant hearing. All parties have had the opportunity to be heard and to respond.

5. The motion to compel discovery is specifically based upon [PAM] and [DHM]'s claimed defense of laches. In summary, that defense alleges that the trustees could have brought the petitions earlier, but delayed bringing them until after the time that [JHM] was placed under guardianship and determined to be incompetent. It is asserted that although the trustees did not seek the guardianship, they worked in concert with two other children of [JHM] who initiated the proceedings. The effect of the delay was to prevent a possible adoption of the younger children by [JHM]. In pursuit of such defense, counsel seeks copies of reports the trustees obtained in the course of their investigation, and seek depositions of several of the past and present trustees. The trustees have asserted the reports are attorney work product compiled in preparation for these proceedings, and are not discoverable.

6. The trustees have also argued that the June 21, 2002 order foreclosed the defense of laches, because it denied

the motion to dismiss these proceedings, determined that "issue" meant biological descendants, and directed further proceedings to determine biological descent. The trustees further argue that laches is not a defense to these proceedings, because no monetary relief is being sought from the younger children, there is no time limitation for the trustees to seek instructions from the court, the trustees did not work in concert with the guardianship proceedings, and the trustees did not in fact delay bringing the proceedings (rather they conducted what they believed to be an appropriate investigation before filing the petitions). The younger children have not refuted the trustee's statements of the timing of their actions or the lack of cooperation with the guardianship proceedings.

7. The trustees' petition concerning the process for determining the biological descent is a request that this court order that the younger children will be conclusively determined not to be biological descendants of [JHM], unless they submit to DNA testing under agreed upon or court-directed circumstances. Their submissions to this court, although not received as evidence, strongly suggest that the younger children are not biological descendants of [JHM]. [PAM] and [DHM] have never asserted that the younger children are such descendants and have never denied the trustees' allegations. The trustees argue that engaging in discovery, whether limited to the defense of laches or directed to the overall issue of biological descent, is unseemly, contentious and invasive. They note that DNA testing, using a saliva sample taken by a quick swab of the inside of the cheek of the person, is really far less invasive and scientifically certain and accurate. They have not, however, asked the court to order such testing. Rather, they ask the court to avoid the litigation and direct that a determination of biological descent will be made in the absence of such testing, or will be made on the basis of the results of such testing.

Upon the foregoing Findings of Fact, the Referee makes the following

CONCLUSIONS OF LAW

1. As noted in the June 21, 2002 order, the trustees have a duty to ascertain the beneficiaries of the trust, and to administer the trusts and distribute trust income and principal in accordance with the trusts' provisions. In these trusts, determination of beneficiaries means a determination of biological descent.

2. The proceedings before the court have been brought pursuant to Minn. Stat. 501B.16 (2000). The court has jurisdiction of the trust as a proceeding *in rem*. Minn. Stat. § 501B.24 (2000). It does not have personal jurisdiction over the trust beneficiaries.

3. The request for a re-consideration should be denied. Ultimately, this court's orders will all be appealed, and no useful purpose will be served by additional briefings to this court on the effect of *Palmer*, nor by a general reconsideration of the June 21, 2002 order.

4. The motion to strike should be denied as largely moot. All parties have had the opportunity to address all of the issues, and have done so.

5. Although this court did not specifically rule on the defense of laches in its June 21, 2002 order, the defense is not applicable to these proceedings. The doctrine does not apply where there is no claim for monetary gain. Moreover, beyond the assertion that [JHM] *might* have adopted the younger children after the these proceedings were instituted, there is no indication that the trustees unduly delayed their petitions, that [JHM] had the capacity to adopt in the period before the start of these proceedings, or that he would have adopted if he

had the capacity. There is no indication that the factual basis for it exists. Discovery related to this alleged defense should not be permitted.

6. Although the attempt to discover copies of the investigator's report(s) is primarily related to the laches defense, it also relates to the broader issue of the biological descent. In either event, such report(s) are attorneys' work product and are not subject to discovery.

7. The disallowance of further discovery, whether on the defense of laches or on biological descent, is a legal conclusion on those issues. It also reflects the court's representation of two of the minor children. The court is concerned that such discovery is far more harmful to them than the DNA testing. They are aware, or obviously soon will become aware, of the allegations that [JHM] is not their biological father. Having full-fledged discovery, including depositions of not only their mother, but also numerous other persons, on the circumstances surrounding their conception will not protect their privacy, dignity and well being. It is not in their best interests.

8. The trustees' suggested procedure for determination of biological descent is an instruction pursuant to Minn. Stat. § 501B.16. Although it contains a request to make a determination of biological descent, it does not request an order for DNA testing. It does request the court to determine descent on the basis of such testing, if the beneficiaries undergo it, or to determine descent on the failure to undergo testing. This proceeding is an *in rem* proceeding, and this court has no personal jurisdiction of the beneficiaries and no authority to order them to submit to testing. The Rules of Civil Procedure, and specifically Rule 35, do not apply to this situation.

9. Although the court represents the two younger children who have not attained majority, it has no jurisdiction of or legal authority over them. Moreover, they lack the capacity to act on their own behalf. A conclusion or result that follows from their failure to take an action during their minority, such as submit to DNA testing, is of doubtful validity. Any such order has to extend for some period after each has attained majority, not unlike the tolling of various statutes of limitation during minority.

10. The June 21, 2002 order authorized the trustees to conduct such proceedings and/or investigation as reasonably necessary to determine if the younger children are the biological children of [JHM]. It directed that such proceedings and investigation be conducted in such a manner as to preserve the dignity, privacy and well being of the three children in question as much as is reasonably possible. As noted above, the trustees' allegations concerning the biological descent have not been denied. Pre-trial discovery and litigation on the issue is unseemly, invasive and obviously expensive. A better process is this court's order directing that the court will determine that the younger children are not the biological descendants, unless they submit to DNA testing within a certain period of their attaining majority. If they do submit to such testing, the determination will be made on the basis of the results of such testing. Such an approach may actually require three different determinations and will necessarily involve a delay in the final determination until some period after the youngest child attains majority.

11. In Minnesota, the general rule is that minority suspends the running of statutes of limitations, and such statutes are generally not extended for more than one year after the attainment of majority. Minn. Stat. § 541.15 (2000). Using this as a guide, this court's order limiting the time for

the DNA testing should extend the time until one year after a child attains majority.

The Court, having reviewed the Findings and Conclusions of the Referee and all of the files and records herein and being fully advised in the premises, now

ORDERS

1. The beneficiaries of the instant three trusts are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the adoption restrictions described in the [1980 JHM Family Trust] (C9-91-159) and the [1980 SMC Trust] (C5-91-160).

2. [DHM], [CWM] and [ACM] are conclusively determined not to be biological descendants of [JHM] or descendants of [JHM] through legal adoption, for purposes of the three instant trusts, unless they submit to DNA testing described herein and the results of such testing establish that they are such biological descendants. Such testing for each such person shall occur within one year of this order or within one year following such person's eighteenth birthday, whichever period is later. The testing for all three persons shall be conducted by one reputable professional testing company regularly engaged in such testing. The testing company shall be selected by the trustees and shall regularly maintain a facility for the purpose of collecting DNA samples located within a reasonable distance of the [PAM]'s present Florida residence. The trustees shall pay the cost of such testing as an expense of trust administration. The company shall agree in writing to disclose the results of such testing only to the trustees and to the persons tested and/or their legal representatives and the trustees shall disclose such results only as reasonably necessary to the administration of the three trusts.

3. The Motion of the trustees to determine the process for determining the trust beneficiaries is granted, as set forth herein.

4. The Motions, Petitions, and Requests of [PAM] and [DHM] to Compel Discovery, to Reconsider the June 21, 2002 order, and to strike some the trustees' written submissions are all denied.

5. The original copy of this Order shall be filed in court file C6-91-166, and photocopies of this Order shall be filed in court files C9-91-159 and C5-91-160. The filing of the photocopies shall have the same force and effect as if a duplicate original copy of this order been filed in those court files.

6. Let judgment be entered accordingly.

Findings and Conclusions
Submitted and Order
Recommended by:

s/ 2/12/03
Bruce Kruger Date
District Court Referee

s/ 2/12/03
Patricia L. Belois Date
Judge of District Court

[PROBATE COURT SEAL]

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE-MENTAL HEALTH DIVISION

In the Matter of the Trusteeship of
the Trust known as the "[JHM 1974 Trust]"
Created Under Trust Agreement dated
December 31, 1974

In the Matter of the Trusteeship of
the Trust known as the "[1980 JHM Family
Trust]" Created Under Trust Agreement
Dated December 30, 1980

In the Matter of the Trust known as the
"[1980 SMC Trust]" Created Under Trust
Agreement Dated December 30, 1980

ORDER INTERPRETING TRUST, GRANTING PARTIAL SUMMARY JUDGMENT AND GRANTING PETITION

File No. C6-91-166
C9-91-159
C5-91-160

This matter came before the court on March 6, 2002, after several continuances, on: (a) the Petition of Robert J. Struyk and Phillip H. Martin, co-trustees of all three trusts (hereinafter "trustees"), for an Order authorizing proceedings

necessary to determine if certain persons are beneficiaries of the trusts, (b) the Motion of trustees for an order determining that a beneficiary of the trusts must be a biological descendant of [JHM] (hereinafter "[JHM]") or a descendant of him through legal adoption, and (c) the Motion of [PAM] and [DHM] to dismiss trustees' Petition and/or for Summary Judgment in their favor on the issues raised by trustees.

Following the hearing, counsel for the parties submitted written memoranda, which were timely submitted on March 20, 2002. Counsel submitted further written materials to the court on June 11 and 12, 2002, and the court has accepted such submissions as part of these matters.

Trustees appeared by their attorneys, Richard B. Solum, William J. Berens and Joseph K. Thiegs.

[PAM] and [DHM] appeared by their attorneys, Morris M Sherman, Frederick W. Morris, David R. Crosby, Jane F. Godfrey, Lowell V. Stortz and Stephen R. Litman.

[JM], [DDM], [KMR], [AMP], [DCM], and [SMK] (hereinafter collectively, "the older children") appeared by their attorney, Phillip A. Cole.

The matter was referred for hearing to Bruce Kruger, District Court Referee, who now reports to the Court making the following:

FINDINGS OF FACT

1. [JHM] and/or other members of the [M] family established the instant trusts for the benefit of [JHM]'s family. The trusts are irrevocable, and neither [JHM] nor any other person has any authority to amend or revoke the trusts. The trusts are and always have been administered in Minnesota. Prior court proceedings concerning these trusts

occurred in Minnesota in 1991. Notice of the original Trustees' Petition dated July 17, 2000 was given by publication and mail pursuant to this court's order for hearing dated July 27, 2000. This court has jurisdiction of the trusts. Notices of trustees' Motion and the Motion of [PAM] and [DHM] were properly given.

2. [JHM] has been married three times. His first spouse was [SVM], and they had three children, whose names are [JM], [DDM] and [KMR]. His second spouse was [SGM], and they had three children, who names are [AMP], [DCM] and [SMK]. All six of these children have attained majority, are represented by the same attorney, and, as noted earlier, are collectively referred to as "the older children." No question has been raised concerning their parentage or status as beneficiaries of the three instant trusts.

3. JHM]'s third spouse was [PAM], and three children were born to her during their marriage. Their names are [DHM], [CWM] and [ACM]. These children are hereinafter collectively referred to as "the younger children." [DHM] has attained majority, and he and [PAM] are represented by counsel and are parties herein. [CWM] and [ACM] are minors, and are also parties herein. The court has undertaken to represent them pursuant to Minn. Stat. § 501B.19 (2000).

4. The instant trusts were all established before the birth of any of the younger children; the eldest of the younger children was born in 1983. Settlement Agreement dated January 24, 1991, Affidavit of [WHL], attachment C. There is no evidence (nor could there be) that [JHM] or the other settlors of the trusts had any specific intention with respect to the younger children. The examination is limited to the language of the trust instruments.

5. Trustees allege they have received information that the younger children are not the biological children of [JHM], although they were born during the marriage of [JHM] and [PAM]. They seek authority to conduct further investigation and/or legal proceedings to determine if the younger children are the biological children of [JHM]. The trustees' Motion for partial summary judgment is for a ruling that a person must be a biological descendant of [JHM] or a descendant of [JHM] through legal adoption in order to be deemed a beneficiary of the instant trusts. The older children join in the Petition of trustees, and in trustees' Motion for partial summary judgment. [PAM] and the younger children oppose trustees' Petition and Motion, and have moved for a dismissal of trustees' Petition, for denial of the summary judgment Motion, and for an Order that trustees either cannot raise the issue of the paternity (lack standing) or that the issue have previously been conclusively determined for purposes of the instant trusts.

6. The 1974 trust (C6-91-166) provides that "issue" of [JHM] are beneficiaries, and defines issue as "...all persons who are descended from ...([JHM])..., either by legitimate birth to or legal adoption by him or any of his legitimately born or legally adopted descendants." Paragraph 1.05(1).

7. The 1980 trusts (C9-91-159 and C5-91-160) provide that issue of [JHM] are beneficiaries, and defines issue as "...all persons who are lineal descendants of the person whose issue are referred to (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants...." Paragraph 3.01.

8. At least for the purposes of these motions, the parties have stipulated that the younger children are not the biological children of [JHM]. The parties disagree as to whether such stipulation may be used for other purposes, and the court has not been asked to rule on the total effect of the stipulation.

9. In the course of the first marriage dissolution proceedings (1986) between [PAM] and [JHM] (these occurred in Florida, the residence of [PAM], [JHM] and the younger children), [JHM] raised the issue of whether the two older younger children were his biological children. Affidavit of [WHL] dated February 4, 2002. Those proceedings were apparently dismissed, but the marriage was eventually dissolved by a second Florida proceeding in 1991. Ibid. In the dissolution judgment dated February 5, 1991, the younger children were identified as ...the parties' minor children...," (Id. at attachment C), and the Settlement Agreement dated January 24, 1991 incorporated into the Judgment included extensive provisions concerning the parenting, the residence, and [JHM]'s financial support of the younger children. Ibid. There was no evidence that the dissolution judgment has been amended or vacated, and there was no evidence that [JHM] has failed to perform his financial obligations to the younger children under the dissolution judgment.

Upon the foregoing Findings of Fact, the Referee makes the following

CONCLUSIONS OF LAW

1. As a part of their duties as trustees, the trustees of the instant trusts have a duty to ascertain the beneficiaries of the trust, and to administer the trusts and distribute trust income and principal in accordance with the trusts' provisions.

2. The beneficiaries of all three trusts are the "issue" of [JHM]. For purposes of the instant matter in which there are no adoptions and only the alleged children of [JHM] are being considered, the definitions of issue as persons "legitimately born to" [JHM] (the 1974 trust) or "lineal descendants" of [JHM] and specifically excluding illegitimate descendants (the 1980 trusts) both mean persons who are the biological children of [JHM]. Stated more broadly to include situations beyond the instant matters, the beneficiaries of all three trusts are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the limitations on adoptions described in the 1980 trusts.

3. Florida has a well-established presumption that children born during a marriage are legitimate. Its courts, however, have distinguished between legitimacy and paternity. See Daniel v. Daniel, 695 So.2d 1253 (Fl. 1997). A child born during a marriage is legitimate, but that does not necessarily mean that the child is the biological child of the husband. Ibid. A parent who is not the biological or adopted parent has no duty to support such a child, even if the child is legitimate. Ibid. Thus Florida preserves the presumption of legitimacy for children born during a marriage, but it clearly permits a challenge to a determination of paternity, subject to various limitations.

4. The Florida Supreme Court has further ruled that a final marriage dissolution judgment which establishes a child support obligation for a former spouse is a final determination of paternity for purposes of child support. D.F. v. Dep't of Revenue, No. SC96288, (Fl. Sup. Ct., June 6, 2002). [JHM] thus cannot challenge the findings that the younger children are the children of his marriage to [PAM], that the children are legitimate, and that he was (is) obligated to provide them support in accordance with the dissolution decree. Moreover, the [M] marriage dissolution decree may be a final

determination of paternity for other purposes, as between the parties and the younger children.

5. Minnesota also has the strong presumption of legitimacy for children born during a marriage and corresponding limitations as to challenges to paternity. See Minn. Stat. §§ 257.51-75 (2000) (the Minnesota Parentage Act). That presumption and statutory procedure is not, however, the only basis for determination of parentage for all purposes. In a determination of intestate succession, for example, the parentage act *may* (emphasis added) be used. Minn. Stat. § 524.2-114(2) (2000). Clear and convincing evidence of the parentage may be used regardless of the limitations of the parentage act. Estate of Palmer v. Palmer, No. C7-02-182 (Minn. Ct. App., June 18, 2002).

6. The presumption of legitimacy is not a *per se* bar to a challenge by the trustees of [JHM]'s paternity of the younger children.

7. The instant trusts are and always have been irrevocable. The trustees must execute their duties free of any control of [JHM] or the other settlors. In addition, the trustees were not parties to the [M] marriage dissolution proceedings. The trustees do not stand in any privity relationship with [JHM]. The trustees are not bound by the findings of the Florida dissolution proceedings under a doctrine of res judicata or collateral estoppel.

The Court, having reviewed the Findings and Conclusions of the Referee and all of the files and records herein and being fully advised in the premises, now

ORDERS

1. The Trustee's Motion for partial summary judgment is granted, and the beneficiaries of the instant three

trusts are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the adoption restrictions described in the [1980 JHM Family Trust] (C9-91-159) and the [1980 SMC Trust] (C5-91-160).

2. The trustees of the three instant trusts are authorized to conduct such proceedings and/or investigation as reasonably necessary to determine if the three children born to [PAM] during her marriage to [JHM] are the biological children of [JHM]. Such proceedings and investigation shall be conducted in such a manner as to preserve the dignity, privacy and well being of the three children in question as much as is reasonably possible. The trustees shall request any court in which the proceedings are brought to seal the court files.

3. The Motions of [PAM] and [DHM] to dismiss the Petition, to deny the trustees' Motion for partial summary judgment, and to direct that the trustees are precluded from raising the issue of paternity are all denied.

4. The original copy of this Order shall be filed in court file C6-91-166, and photocopies of this Order shall be filed in court files C9-91-159 and C5-91-160. The filing of the photocopies shall have the same force and effect as if a duplicate original copy of this order been filed in those court files.

Findings Submitted and
Order Recommended by:

s/ 6/21/02
Bruce Kruger Date
District Court Referee

s/ 6/21/02
Patricia L. Belois Date
Judge of District Court